IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 8 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VANKAR CHHANABHAI CHATURBHAI

Versus

VANKAR MAGANBHAI SHANKARBHAI

Appearance:

MR SV RAJU for Petitioner

Respondent No. 1-Deleted

MR PJ VYAS for Respondent No. 2

MR ST MEHTA APP for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/09/2000

ORAL JUDGEMENT

The petitioner before this court is the complainant in Criminal Case No. 832/85. The petitioner challenges the judgment and order dated 12th October, 1989, passed by the learned Additional Sessions Judge,

Mehsana, in Criminal Appeal No. 5/89 as against the accused nos. 1 and 2.

The complainant Chhanabhai Chaturbhai Vankar lodged a complaint to the effect that on 20th November, 1984, when the complainant was sitting with one Bhudarbhai Kalabhai in his house, the accused persons attacked the said Bhudarbhai Kalabhai, the complainant and the others with lethal weapons like Dharia, stick, knife (BARCHHI) etc. and caused grievous injuries to Bhudarbhai Kalabhai, the complainant and others. Pursuant to the said complaint, Criminal Case No. 832/85 was registered against six persons in the court of the learned Judicial Magistrate, First Class, Kadi. The charge for offences punishable under sections 147, 148, 149, 326, 325, 324, 323, 504, 337 and 338 IPC and section 135 of the Bombay Police Act was framed against the accused persons. The learned trial Judge by his judgment and order dated 20th December, 1988, held the accused nos. 1, 2 and 5 guilty of charge under sections 326, 323 and 114 IPC. The accused no. 6 Shankar Ratna was given benefit of doubt and acquitted of all the charges. The accused no. 4 Kana Shankar was acquitted of all the charges. The accused no. 3 Manabhai Ramabhai had died pending trial and trial against him stood abated. The accused no. 5 Jaha Shankar was convicted for offences punishable under sections 326 and 114 IPC. He was sentenced with simple imprisonment for 3 years and a fine of Rs.2000/-, in default of payment of fine, further SI for 4 months was imposed. The accused no. 1 Magan Shankar was convicted of offence punishable under section 323 IPC and was sentenced with SI for one month and a fine of Rs. 100/-, in default of payment of fine, further SI for 15 days was imposed. The accused no. 2 Shakra Shankar was convicted of offence punishable under section 324 IPC and was sentenced with SI for six months and a fine of Rs.500/-, in default of payment of fine, he was further sentenced with SI for one month. Feeling aggrieved, the accused nos. 1, 2 and 5 preferred Criminal Appeal No. 5/89. The said appeal was partially allowed on 12th October, 1989 as aforesaid. The conviction and sentence of accused No.5 was confirmed. However, the accused Nos. 1 and 2 were acquitted of the charge and the order of conviction and sentence made against them was set aside. Feeling aggrieved, the complainant has preferred the present Revision.

The law in respect of interference with the order of acquittal by the High Court in its revisional jurisdiction is quite well settled. The High Court shall not lightly interfere with the order of acquittal unless

it has resulted into miscarriage of justice. Having perused the judgment of the appellate court, it is not possible to hold that the acquittal of the accused nos. 1 and 2 has resulted into miscarriage of justice. No interference is, therefore, warranted. Besides, there is one more reason why the order of acquittal should not be interfered with. The accused No. 5 Jaha Shankar also has preferred Criminal Revision Application No. 362/89 against his conviction and sentence. In the said Revision Application, Jaha Shankar has filed Misc. Criminal Application No. 2602/98, and has stated that the complainant and the accused persons live in the same locality and belong to the same community and are also inter-related. They have compromised their dispute amongst themselves, and has requested to receive the compromise on record and to allow the offence to be compounded so as to maintain peace and harmony in the society. The application is accompanied by compromise purshis which is signed by the complainant Chhanabhai Chaturbhai and the injured persons Kantibhai, Naranbhai, Kanubhai Parmar, Tulsibhai Parmar, Ishaben and the accused Jaha Shankar. Whether the offence in question can be compounded or not, is a question which will be considered when I deal with the said Revision Application. However, since the parties have compromised, the order of acquittal of two accused persons which is challenged in this Revision does not warrant interference.

Revision Application is dismissed. Rule is discharged.

[Miss R.M Doshit, J.]

JOSHI*